

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

May 21, 2013

In the Matter of SIMS/JOHNSON, Minors.

No. 313106

Wayne Circuit Court

Family Division

LC No. 12-505890-NA

Before: BECKERING, P.J., and JANSEN and M. J. KELLY, JJ.

PER CURIAM.

Respondent-mother appeals as of right from the trial court's order that terminated her parental rights to her three minor children pursuant to MCL 712A.19b(3)(b)(i), (g), and (j). We affirm.

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). "We review the trial court's determination for clear error." *Id.* "A finding is 'clearly erroneous' if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." *In re VanDalen*, 293 Mich App at 139, quoting MCL 712A.19b(5). The best-interest "determination is to be made on the basis of the evidence on the whole record and is reviewed for clear error." *In re LE*, 278 Mich App 1, 25; 747 NW2d 883 (2008). This Court must give due regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C).

The trial court in this case terminated respondent's parental rights under the following statutory grounds:

- (b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:
 - (i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent. [MCL 712A.19b(3)(b)(i), (g), (j).]

We conclude that the trial court did not clearly err by finding that a statutory ground for termination was established under § 19b(3)(j) by clear and convincing legally admissible evidence. See *In re Utrera*, 281 Mich App 1, 16-17; 761 NW2d 253 (2008); MCR 3.977(E)(3), (K). According to the evidence, respondent took care of her daughters when she was available, and the father of LJ watched the children when respondent was at work. Eight-month-old LJ was hospitalized on February 26, 2012, with severe injuries, including five broken ribs, liver damage, and multiple bruises.

Dr. Dena Nazir, a pediatrician at Children's Hospital of Michigan and the Chief of the Child Protection Team at the hospital, testified at trial that she examined LJ and spoke with respondent. LJ had bruises beside the left eye, on the left cheek, on the back, and on both sides of her body. X-rays showed five broken ribs on the right side. A lab test showed that LJ's liver enzymes were extremely elevated, which was a sign of liver damage. Dr. Nazir stated that the broken ribs were "very new fractures and they happened within the past week" because they did not show signs of healing, which appear within 7 to 10 days. Dr. Nazir was unable to "date the bruises" but stated that respondent reported seeing the bruise by LJ's eye "at the beginning of the week" and the bruises on LJ's back on February 25.

Respondent admitted to Dr. Nazir that LJ had "a history of bruises" on her face (some old, some new), which respondent attributed to LJ hitting herself sometimes with her own hand and sometimes while holding a toy, banging it on her face. Respondent did not have an explanation for bruises that were on the child's back, both sides of her body, or the broken ribs.¹

¹ Although the paternal grandmother offered a history involving LJ having twice fallen off a bunk bed, the second time becoming wedged between the bed and a desk, no one noticed any bruising after either incident or sought medical attention. A Child Protective Services (CPS) worker testified that the paternal grandmother gave her two differing versions of the alleged second fall. She examined the bedroom where the alleged fall took place and found there to be too big of a space between the furniture for a baby to be stuck in the middle. Dr. Nazir testified that respondent—who was said to have placed the baby on the bed at the time of the second fall—did not include a fall in her history given at the hospital. Dr. Nazir also testified that the falls described by the paternal grandmother would not explain LJ's presenting injuries.

According to Dr. Nazir, the child's injuries were not consistent with respondent's explanation for them; instead, the rib fractures were consistent with child abuse, including "very, very" tight and very forceful squeezing of the rib cage or direct impact to the rib cage, such as being hit with or slammed on top of an object.² The bruising was not in locations where Dr. Nazir would expect an eight-month-old baby—who is not walking or running and falling—to bruise; instead, they were the result of direct trauma. Dr. Nazir determined that LJ's multiple injuries were consistent with physical abuse.

Respondent claimed that when she picked up LJ from the father on February 25, 2012, she noticed LJ's bone "crack" when she lifted her up. Instead of seeking medical attention for LJ, respondent left her in the care of a friend and went shopping. She stated that she did not seek immediate medical attention for her initial concerns about LJ's bruising because she was afraid that CPS would become involved.

Despite claiming that she noticed a broken rib after taking LJ from the father, respondent refused to acknowledge that the father could be responsible for the abuse, and she chose not to immediately seek medical attention for the apparent serious injury. Given respondent's indifference to the child's abuse and physical welfare, it was reasonably likely that respondent's children would be harmed if returned to respondent's home. Because only one statutory ground for termination need be established, *In re CR*, 250 Mich App 185, 207; 646 NW2d 506 (2001), and the trial court did not clearly err by finding that § 19b(3)(j) was proven by clear and convincing evidence, it is unnecessary to determine whether the trial court erred by relying on §§ 19b(3)(b)(i) and (g) as additional grounds for termination. Any error by relying on those grounds would be harmless. See *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Finally, in light of the serious injuries inflicted on LJ and respondent's indifference to those injuries, the trial court did not clearly err by finding that termination of respondent's parental rights was in the children's best interests to assure their safety and well-being. See MCL 712A.19b(5); MCR 3.977(E)(4); MCR 3.977(K). Respondent's claim that the trial court erred because she was not given an opportunity to show that she could become a fit and proper parent through participation in services is unavailing. Reasonable efforts to reunify the child and family are not required if "[t]here is a judicial determination that the parent has subjected the child to aggravated circumstances as provided in" MCL 722.638(1) and (2). MCL 712A.19a(2)(a). The trial court found that this subsection applied, and respondent did not challenge that determination in the trial court and has not alleged error on appeal.

Affirmed.

/s/ Jane M. Beckering
/s/ Kathleen Jansen
/s/ Michael J. Kelly

² Dr. Nazir noted that LJ had neither family with nor a history of bone disease and that the type and location of LJ's fractures were not associated with bone disease.